

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KYLE PETERSEN,

No. 1:20-cv-00884-DAD-EPG

Plaintiff,

v.

ANTHONY SIMS, JR.,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND STAYING
ACTION

Defendant.

(Doc. No. 10)

Plaintiff Kyle Petersen is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 2, 2020, the assigned magistrate judge issued findings and recommendations, recommending that the case be stayed pending completion of plaintiff's appeal to the Ninth Circuit "concerning the search of his cellular phone." (Doc No. 10 at 7.) The findings and recommendations were served on plaintiff and contained notice that objections thereto were to be filed within twenty-one (21) days after service. (*Id.*) Plaintiff sought and received a sixty (60) day extension to file objections. (Doc. Nos. 11, 12.) Plaintiff filed timely objections to the findings and recommendations on October 19, 2020. (Doc. No. 14.)

1 The court finds plaintiff's objections unpersuasive. Plaintiff argues that his claim in this
2 action, "that the defendant conducted an illegal search of Plaintiff's two cell phones in 2019 by
3 reanal[y]zing previously captured forensic images," is not at issue in his appeal before the Ninth
4 Circuit. (Doc. No. 14 at 1.) Plaintiff's complaint asserted claims concerning the search of his
5 cellular phones in the investigation of the criminal case brought against him, *United States v.*
6 *Petersen*, 1:17-cr-00255-NONE-SKO (E.D. Cal.). (Doc. No. 1.) Plaintiff filed an appeal
7 contesting, in part, the district court's denial of his motion to suppress evidence obtained from the
8 search of his cellular phones in that underlying criminal case. Brief of Defendant-Appellant at
9 24, 33, *United States v. Petersen*, No. 19-10246 (9th Cir. Jan. 31, 2020). In his appellate brief,
10 plaintiff argues that his motion to suppress evidence should have been granted in part because
11 forensic images from his cell phones were obtained pursuant to a search warrant issued in
12 violation of his Fourth Amendment rights. (*Id.* at 42.) The court concludes that the issue decided
13 by the Ninth Circuit—whether the forensic images from plaintiff's cell phones were obtained in
14 violation of the Fourth Amendment and should be suppressed in the criminal case—is clearly
15 relevant to resolution of this civil action.

16 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a
17 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
18 objections, the court finds the findings and recommendations to be supported by the record and
19 proper analysis.

20 Accordingly,

- 21 1. The findings and recommendations issued on September 2, 2020 (Doc. No. 10) are
22 adopted in full;
23 2. This action is stayed pending resolution of plaintiff's pending appeal from the
24 judgment of conviction in his criminal case;

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- 1 3. Within thirty (30) days of plaintiff receiving an opinion from the Ninth Circuit
 - 2 concerning his appeal, plaintiff shall file such opinion together with a statement
 - 3 regarding whether he wishes to proceed with this civil action; and
 - 4 4. This case is referred back to the assigned magistrate judge for further proceedings
 - 5 when appropriate.

IT IS SO ORDERED.

Dated: November 20, 2020

Dale A. Lloyd
UNITED STATES DISTRICT JUDGE